

A rare Wisconsin book /

A RARE WISCONSIN BOOK. BY THEODORE LEE COLE.

When beginning my study of the bibliography of American statute laws, some years ago, my attention was attracted by the resolution passed by the Wisconsin legislature, January 19, 1838, directing "That the following entitled acts selected from those now in force in this Territory, be printed and published as an appendix to the pamphlet laws of the present session," and giving the titles thereof, a hundred and twenty-five in number.¹ There being no appendix of any kind to the current volume of the laws of that session, it occurred to me that possibly this publication had been made in some other form. I carefully examined all those libraries, public and private, both within the state and elsewhere, likely to contain it. I also inquired, in person or by letter, of everyone likely to have, or to know of, such appendix; but so far from finding it, I could not find any one who had even heard of it. In the meantime I had been searching the journals and laws of the legislature, and discovered there so interesting a thread of legislative history, in the matter of early official printing, and printers, in Wisconsin, that I venture to give some account of it.

1 *Acts of Legis. of Wis.*, winter session of 1837–38 (Burlington, Iowa, 1888), p. 329. Reprint thereof (1867), p. 529.

The second session of the legislative assembly of the Territory of Wisconsin was held at Burlington (now in Iowa), from November, 1837, to January, 1838, and is known as the "Winter session of 1837–38." On December 29, 1837, a joint committee was appointed — Messrs. Foley, Smith, and Sweet of the council, and Shoales, Quigley, and Chance of the house—to make a selection for publication, of laws 384 from the statutes of Michigan.¹ January 17, 1838, the resolution reported by this Committee was passed by both houses, was approved by the governor on the nineteenth, and is the one quoted from above.

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1 *Council Jour., Wis. Terr. Legis.*, 1837–38, p. 97; and *House Jour.*, p. 233.

The necessity for this publication was, the great difficulty in ascertaining what were the laws of Wisconsin at that time. Those of Michigan Territory, as they stood July 3, 1836, had been continued in force in Wisconsin, by the organic act, and were still the large body of the law. They could only be found in the *Revised Statutes* of Michigan of 1833, and the session-laws of 1834, 1834–35, and 1835. Very few of these books were to be found on the west side of Lake Michigan — how few, may be inferred from a sentence in the letter from Judge Mason quoted below, and from the resolution of the council adopted in December, 1838,² that a messenger go from Madison to Green Bay, “to procure for the use of the legislature such numbers as may be had of copies” of these laws, for which his expenses were allowed at fifty dollars.³ Not only the people, but the lawyers, judges, and legislators, were unable to obtain copies of the laws by which they were to govern, or to be governed.

2 *Council Jour.*, 1838, p. 39.

3 *Local Acts*, 1838–39, p. 21. The messenger was Charles P. Green.

A resolution approved January 16, 1838, had given the printing of the laws of the 1837–38 session to James Clarke & Co., of Burlington, “the same to be ready for distribution on or before the fifteenth day of May next;” and another resolution, of the nineteenth, required the printer to reprint the laws of the first session (1836), “and attach the same to the laws” of the present session.⁴ This volume, in three parts—1st, laws of 1836 reprinted; 2nd, laws of 1837–38; and 3rd, the selected Michigan acts — was the one I was hunting for, but could not find. I found the *Acts of 1837–38*, which I have been citing, but it bears the imprint of James G. Edwards, and has with it the acts of the next session (June 1838), instead of the two reprints, and is quite a different book.

4 *Acts*, 1837–38, pp. 326, 327; reprint thereof (1867), pp. 524, 526.

Continuing the search of the journals, I found that on again meeting in Burlington, in June, 1838, the legislature could find neither the book they had been at such pains to provide for their enlightenment, nor their printer, James Clarke. His foreman testified, "that Mr. Clarke left Burlington destined for some of the eastern cities, taking along with him several extracts from the statutes of Michigan, as he supposes, for the purpose of procuring the printing of them in pamphlet form, and to await the arrival, after they should have been prepared for that purpose, of the manuscript copies of the laws passed at our late session;" and "that for some reason, he knows not what, the manuscripts were not sent, and that it is his belief that Mr. Clarke is now awaiting the receipt of the copies."¹

¹ *House Jour.*, June, 1838, p. 25.

This was disappointing, but the only remedy seemed to be to get another printer. After several committees had reported on the subject, and bids had been received, James G. Edwards, of Fort Madison (now in Lee county, Iowa), gave bond, on June 30, 1838, in the sum of five thousand dollars, for the faithful performance of his contract to print all the laws, etc., directed to be printed by the three resolutions of the last session, "the whole to be done up in one volume, to be half-bound in calf, and fifteen hundred copies thereof to be delivered at Fort Madison, W. T., to such agent as the legislative assembly shall appoint, within seventy-five days from the day of the date hereof."² On the twenty-fifth, Charles Mason had been appointed as agent to receive the laws from Edwards, and to distribute them.³

² *Ibid.*, p. 95.

³ *Acts*, 1837–38, p. 361.

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The seventy-five days' limit of Edwards's contract expired September 13, 1838; but when the assembly met on November 36 following, at Madison,⁴ we find them again disappointed, notwithstanding all their efforts to get these 25

4 The new capital of Wisconsin Territory. Not to be confounded with Fort Madison, now in Iowa.

386 laws printed. On December 6, a resolution was approved, appointing William B. Long "special messenger to proceed forthwith to the town of Burlington, in the Territory of Iowa, and procure for the use of this territory, such numbers of copies of the laws of the last session as may be the due proportion belonging to the Territory of Wisconsin."¹ This step Governor Dodge had recommended in his message. On December 10, however, Secretary Slaughter transmits a letter from the agent, Judge Mason, who writes from Burlington, November 21, 1838: "I am sorry that I am compelled to inform you that the laws * * * are not even yet entirely printed. * * * It would not probably be practicable to send them to your territory until the opening of navigation in the Spring. * * * The causes of this delay, as given by Mr. Edwards, are first the general sickness that pervaded the country, * * * and secondly, that it has not been practicable for him to obtain a copy of the printed laws, which were ordered to be republished. He has not been delayed a moment for want of copies of the laws of the last general [1837–38] and special [1838] sessions. These are all that Mr. Edwards himself is intending to print." And then Judge Mason gives the information—important, so far as our inquiry is concerned,—that "The laws of 1836 and those selected from the Michigan statutes which were ordered to be republished, *were printed in Pennsylvania*, under the direction of Mr. Clarke, of whom Mr. Edwards contracted to take them. Owing to the low stage of water in the Ohio, they have not been received, and will not probably arrive before spring. Owing to this fact Mr. Edwards has, I believe, concluded to have the laws he himself has printed, done up by themselves, so that they may be ready for distribution immediately as opportunity presents itself."² All this sounds strangely to our ears, but it gives a striking picture of conditions then existing in the Northwest.

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1 *Acts*, 1838–39, *Appendix*, p. 4.

2 *Council Jour.*, 1838–39, p. 138.

Here then, at last, we have the official information that 387 the selected laws had really been printed in 1838, and that a book, similar to the one I had been in search of, had once, at least, an existence. Clarke had tried faithfully to fulfill the duty imposed on him by the legislature, and had gone east to superintend the publication; unable to get the manuscript of the laws of the session of 1837–38, he had had printed all that he had “copy” for—to wit, the selected laws, and those of the session of 1836; Edwards, six months later, was able to print the very matter (the laws of 1837–38) that Clarke could not; and, unable to print the selections, and the laws of 1836, that Clarke had already printed, he wisely agreed to take Clarke's books with which to help fill his contract with the Territory.

Our next information gives a little brighter color to this dismal picture of delay. We learn that on December 17, 1838, Edwards delivered to Messenger Long, at Burlington, fifty-six copies of the laws of 1837–38 and of June, 1838, the rest of the edition having been sent to St. Louis for binding.¹ But the patience of our long-disappointed legislators had become exhausted, and on December 22, 1838, a resolution was adopted, reciting the contract with Edwards, and his failure fully to comply with its conditions, and directing him “not to proceed further with the printing or binding of said laws, and that whenever within two months, he shall deliver to the agent of this Territory, the sheets already printed, he shall be paid such compensation therefor as the legislature may deem just and reasonable.”²

1 *House Jour.*, 1839, p. 258.

2 *Acts*, 1838–39, *Resolutions*, p. 7.

Evidently this determination on the part of the legislature was based on the fact that a joint committee had been appointed the tenth of December to make a full and complete revision of the laws—the *Revised Statutes* of 1839; on the completion of that work, and

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its adoption, these reprinted laws, which might have been so useful before, would now be replaced and almost wholly useless, except to the student of the history of the law, or to the bibliographer of a half-century later.

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The only further records in the journals and laws, as to these books and their printing, are memorials from Clarke and Edwards asking for compensation for printing them, and resolutions providing therefor. The matter seems to have been finally settled by the appropriation to Edwards, in August, 1840, of two thousand dollars for publishing the acts of 1837–38 and June, 1838; and to Clarke, in February, 1841, of one thousand dollars “for printing laws for the Territory, in the year 1838.”¹

¹ *Acts*, 1840–41, pp. 145, 154.

Of the books themselves, Wisconsin probably got her due proportion of the acts of 1837–38 and 1838, printed by Edwards; but if any copies of Clarke's volume reached Wisconsin, diligent search and inquiry have failed to reveal them. Our last information about them is, that they were at Pittsburg, or some other Ohio-river point, awaiting high water to float them to the place where they were so much desired.

Iowa Territory had the same interest in the volume that Wisconsin had, and no more, since early in 1839 she too made a complete revision of the laws in force. Knowing, at last, that the Clarke volume once had an existence, I included Iowa in my search, and there, to my delight—how great only an enthusiastic book-hunter can know—I found just one copy, and I became its happy possessor. Perhaps it was one brought back by Clarke himself on his return from the east; very likely it is the only survivor of the accidents by flood and field, to the whole edition.

Following is a description of this rare Wisconsin book:

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Title page: Acts | passed at the First and Second Sessions | of the | Legislative Assembly | of the | Territory of Wisconsin. | Published by authority. | Burlington, W. T. | James Clarke, printer to the Legislative Assembly. | 1838. | [and] | Appendix, | containing a number of the most important | Laws of Michigan, | extended over the Territory of Wisconsin by the Act of | Congress organizing said Territory. | Printed by authority. | 1838. | O. pp. 95+[1]+300.

Collation: Title, 1 leaf; Organic Law and Proclamations, 389 pp. 3 to 12; Acts &c. of 1st session (1836), pp, 13 to 95; Certificate of true copies of foregoing, [1] page; Title to Appendix, 1 leaf; Laws of Michigan, pp. 3 to 293; 1 page blank; Index to Appendix, pp. 295 to 300.

It may be noted about the book, that: (1) The title page shows that Clarke intended, as required by the resolution, to include the acts of the second session, 1837–38; and this also accounts for the absence of an index to the laws of the first session, as he probably expected to index the two sessions together, when he should get those “manuscript copies” and have them printed; (2) the laws of the first session is a fairly accurate reprint of the former edition by the same printer (Belmont, 1836, pp. 88), but with some differences; (3) the reprinted Michigan laws comprise substantially the body of the general law then in force, and such of the local laws as applied to the new territory, and would have been exceedingly useful, could the book have been in the hands of those who wanted it so badly in 1838.

I have not yet heard of the existence of another copy, and believe my copy to be unique.